

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:08-CR-310

v.

HON. ROBERT HOLMES BELL

SOLOMON DEANDERA MARTIN,

Defendant.

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MEMORANDUM OPINION AND ORDER

Defendant Solomon Deandera Martin has filed a motion for modification or reduction of sentence (ECF No. 32) pursuant to 18 U.S.C. §3582(c)(2) on the basis of Amendment 782 of the United States Sentencing Guidelines, made retroactive by the Sentencing Commission.

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 782 of the United States Sentencing Guidelines reduced by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties in U.S.S.G. §§ 2D1.1 and 2D1.11. These modifications were made retroactive effective November 1, 2014. U.S.S.G. § 1B1.10.

The Probation Department filed a sentence modification report (ECF No. 41) recommending Defendant's motion be denied because Count 1 of the Indictment, Felon in Possession of a Firearm; 18 U.S.C. § 922(g)(1), controls the guideline range due to a higher adjusted offense level. In this case, a reduction of sentence is inconsistent with the policy statements of the U.S. Sentencing Commission. Pursuant to Amendment 782, no further reduction is granted because the Felon in

Possession charge controls the drug guidelines. Defense counsel has filed a response to the report of eligibility, ECF No. 43 and wishes to preserve the issue for future consideration should the law change. The government has also filed a response (ECF No. 44) concurring with the probation department's assessment.

Therefore, IT IS HEREBY ORDERED that Defendant's motion for modification of sentence (ECF No. 32) pursuant to 18 U.S.C. § 3582(c)(2) is DENIED.

Dated: January 20, 2017

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE